

Notice of Complaint

To: City of Yakima – City Manager and Legal Staff

CC: City of Yakima Planning and Code Enforcement, Mr. Greg Bainter (General Manager Bainter Group LLC), Mr. Thomas Durant, Mr. Cliff Bennett

Date: November 6, 2014

Drafted by Dr. Matthew Seaman (8902 Tieton Dr., Yakima, WA 98908)

*****Please place a copy of this document within the Bainter/Bainter Group LLC Planning Department File for 2014**

*****Please place a copy of this document within the Bainter/Bainter Group LLC Code Enforcement File for 2014**

Bainter Group LLC:

Bainter Group LLC includes the following: Mr. Greg Bainter (general manager), Mr. Jeff Bainter, Mr. Brett Bainter, Adele Bainter – *based upon public records*. Bainter Group LLC owns parcel 21403 at 608 S. 90th Ave., Yakima, WA 98908.

General Issue:

Unlawful critical area alterations along Shaw Creek on parcel 21403* – and – no appropriate action by the City of Yakima to enforce the protection of critical areas. Critical area destruction has been performed by a developer, Mr. Greg Bainter and Bainter Group LLC. There are significant legal and financial liabilities. (*parcel 21403 at 608 S. 90th Ave., Yakima, WA 98908).

Recent critical area violations at the Bainter site (late October, 2014):

1. **Mowing of regulated wetland buffer zone on east side of property – parcel 21403**
2. **Mowing of wetland and the wetland buffer zone on the west side of property – parcel 21403**
3. **Scraping to bare soil the riparian buffer zone up to the high water mark of the watercourse (Shaw Creek – now in an illegally repositioned location) on parcel 21403**
4. **Mowing of vegetation within the federally protected Riparian Buffer Zone; mowing up to the high water mark of the watercourse (Shaw Creek – now in an illegally repositioned location) on parcel 21403**
5. **Dewatering of Shaw Creek (a perennial, fish bearing stream) on parcel 21403**
6. **Mowing of vegetation within the Shaw Creek FEMA 100-year Floodplain on parcel 21403**
7. **Infiltration of fecal bacteria and other toxins into the subsurface aquifer on parcel 21403**

Longstanding critical area violations by Mr. Bainter and Bainter Group LLC:

1. **Without legal permits in April, 2012, Mr. Greg Bainter and Bainter Group LLC illegally diverted and repositioned Shaw Creek into a new watercourse in violation of the Yakima Municipal Code and in violation**

of the federal Clean Water Act. This violation is consistent with preemptive habitat destruction in advance of development.

2. Without legal permits in April, 2012, Mr. Greg Bainter and Bainter Group LLC illegally filled Shaw Creek as defined by the land survey of 2011. This violation is consistent with preemptive habitat destruction in advance of development.
3. Without legal permits in April, 2012, Mr. Greg Bainter and Bainter Group LLC illegally filled portions of the Shaw Creek FEMA 100-year Floodplain for the purpose of expanding the Bainter B-2 commercial zoning district. This violation is consistent with preemptive habitat destruction to facilitate commercial expansion and development.
4. Without legal permits, in April, 2012, Mr. Greg Bainter and Bainter Group LLC illegally filled wetlands along Shaw Creek; this act can be classified as a case of “preemptive habitat destruction” in advance of commercial development.
5. Without legal permits, in April, 2012, Mr. Greg Bainter and Bainter Group LLC illegally filled the federally protected Riparian Buffer Zone associated with Shaw Creek. This violation is consistent with preemptive habitat destruction in advance of commercial development.

Requested actions by the City of Yakima:

1. Cancel and revoke the Critical Area Permit of 2012 for the so-called “Bainter Riparian Habitat Improvement Project”. Mr. Greg Bainter used

the permit to illegally relocate Shaw Creek and then illegally fill critical areas. (*Revoking the permit is indicated according to the YMC.*)

- 2. Issue an immediate Stop Order regarding development on parcel 21403 by Mr. Greg Bainter and Bainter Group LLC.**
- 3. Issue an immediate Notice of Violation to Mr. Greg Bainter and Bainter Group LLC regarding all of the critical area violations listed within this document.**
- 4. Abate the illegal Bainter ditch that was excavated by Mr. Greg Bainter and Bainter Group LLC in 2012.**
- 5. Restore Shaw Creek to the location defined by the 2011 land survey.**
- 6. Restore damage done to critical areas at the site (parcel 21403)**
- 7. Use the legally defined processes to restore the unlawful critical area destruction at the site. Mr. Greg Bainter and Bainter Group LLC are required to pay for Qualified Professionals to create a plan for restoration. Then the plan is to be completed.**
- 8. No further development at the site is to be allowed until the completion of restoration. (Currently the City of Yakima is contemplating a new round of development on parcel 21403 for sewer and utility roadway construction at the site).**
- 9. Fulfill the legally required duty of notifying FEMA, Ecology, and downstream property owners regarding the illegal relocation of Shaw Creek by Mr. Greg Bainter and Bainter Group LLC. *See YMC.***

- 10. Disallow Bainter Group LLC from ongoing destruction of critical areas that includes mowing of vegetation up to the high water mark of the watercourse (i.e. reverse the decision by Mr. Jeff Peters of August 7, 2014 that allows Bainter Group LLC to destroy critical areas), mowing of wetland buffer zones, mowing of wetlands, and mowing of vegetation within the Shaw Creek FEMA 100-year Floodplain.**
- 11. Remove Mr. Jeff Peters from all roles dealing with Shaw Creek and with the Bainter Group LLC project (including Shaw Creek NEPA, Bainter Code Enforcement, Bainter Planning Decisions). Mr. Jeff Peters is closely associated with the felonious violation of the federal Clean Water Act as it applies to the illegal repositioning of Shaw Creek, the illegal placement of fill into critical areas, and the destruction of critical area features at the Bainter site.**

Overview:

Bainter Group LLC continues to destroy critical areas on parcel 21403. More photographs show that Bainter Group LLC has mowed critical areas up to the high water mark of the existing watercourse for the waters of Shaw Creek; these critical area violations occurred between October 27 and November 2, 2014 as documented by the photographic record. Photographs show that water now infiltrates into permeable alluvial soils at the base of the illegally positioned ditch on parcel 21403. Previous Ecology studies of the water show high counts of fecal bacteria (E. coli, other). The infiltration of

the water containing fecal bacteria and other toxins serves to introduce sewage into the subsurface aquifer used by several nearby residents for potable water. The infiltration of water into permeable alluvial soils within the illegal ditch serve to dewater the perennial stream leading to the extermination of fish and the loss of wildlife (birds and mammals).

Photographs now show that Mr. Bainter and Bainter Group LLC has scraped and denuded soils up to the high water mark of the watercourse; needless to say this has led to destruction of vegetation within the Riparian Buffer Zone. Photographs show that Mr. Bainter and Bainter Group LLC have mowed directly over wetlands, cropping the vegetation growing within the wetlands. Photographs currently affirm that Mr. Bainter and Bainter Group LLC continue to mow protected vegetation up to the edge of regulated wetlands and up to the high water mark of the watercourse.

Bainter Group LLC submitted grossly misleading plans in 2012 for a so-called “Bainter Riparian Habitat Improvement Project” purported to benefit fish within the stream. No such project took place. Instead, Mr. Greg Bainter and Bainter Group LLC used a Critical Area Permit (obtained to perform ‘habitat enhancement’) to divert and relocate Shaw Creek. In addition, using the habitat enhancement permit, Mr. Bainter filled the legal position of the watercourse. Critical area violations include the illegal diversion of Shaw Creek, filling of the legal location of the Shaw Creek watercourse, and the illegal filling of Shaw Creek critical areas. These actions by Mr. Greg Bainter and Bainter Group LLC serve to document preemptive habitat destruction in order to facilitate future commercial development at the site; the habitat destruction also served as a means for Mr. Bainter to

Creek along with the associated critical areas.

The illegal critical area violations were fully known to at least one City of Yakima Official, Mr. Jeff Peters, in advance of the environmental destruction. The critical area violations are entirely consistent with criminal violations of the federal Clean Water Act. Continued critical area destruction on parcel 21403 has been authorized by Mr. Jeff Peters on August 7, 2014; this information was made available to me on October 31, 2014 after a public records request. Serious legal and financial entanglements now appear to trouble the City of Yakima resulting from decisions by Mr. Peters.

Decisions by Mr. Peters are corrupting the ongoing process to relocate Shaw Creek into a new channel (i.e. Shaw Creek NEPA). Decisions by Mr. Peters violate the Clean Water Act, the Open Public Meeting Act and the Yakima Critical Areas Ordinances. Decisions by Mr. Peters reflect the position of the City of Yakima to enable, facilitate and approve a series of destructive critical area alterations by Mr. Greg Bainter and Bainter Group LLC. Actions taken by Mr. Greg Bainter, Bainter Group LLC, and Mr. Thomas Durant (associate of Mr. Greg Bainter) are consistent with felony violations of the federal Clean Water Act.

Sequence of relevant events and statement of facts

1. Bainter Group LLC obtained ownership of parcel 21403 fairly recently (apparently in 2004).

2. The purchase of parcel 21403 did not include any transfer of rights to Bainter Group LLC to destroy critical areas including wetland buffer zones and riparian buffer zones along Shaw Creek.
3. There has been no previous legal permit, letter or permission granted to Bainter Group LLC that authorizes this corporation to destroy vegetation within critical areas along Shaw Creek, to destroy vegetation within the Shaw Creek FEMA 100-year Floodplain, or to destroy other critical areas on land owned by Bainter Group LLC.
4. Mr. Bainter and Bainter Group LLC submitted incomplete and seriously misleading project plans in 2012 to perform a so-called “Bainter Riparian Habitat Improvement Project” to benefit fish and wildlife along Shaw Creek.
5. The JARPA (along with SEPA and Critical Area Forms) of 2012 submitted by Mr. Bainter, Bainter Group LLC, and prepared by Mr. Durant contained false, misleading, and deceptive responses that indicated there would be habitat enhancement and that a dry flood channel would be excavated. JARPA responses by Mr. Bainter demonstrated he would plant native vegetation and excavate a dry channel that was designed to prevent flooding of nearby homes.
6. The JARPA for 2012 is being submitted to the United States Department of Justice for possible investigation and prosecution related to falsification of responses in violation of 18 USC 1001. While Mr. Bainter indicated on the JARPA that he would be improving habitat, his real work at the site

significantly destroyed habitat. The responses within the JARPA were not truthful.

7. The JARPA for 2014 is being submitted to the United States Department of Justice for possible investigation and prosecution related to falsification of responses in violation of 18 USC 1001. Responses on the 2014 JARPA do not truthfully address prior and ongoing destruction of critical areas by Mr. Greg Bainter and Bainter Group LLC and the responses conceal numerous critical area violations at the project site.
8. Mr. Jeff Peters, City of Yakima Planning Supervisor, reviewed the Bainter environmental documents of 2012 along with other Planning Officials at the City of Yakima.
9. Mr. Bainter and Bainter Group LLC submitted a supporting diagram in 2012 demonstrating water pouring out of Shaw Creek and directly flowing towards homes within the Cottonwood Grove subdivision.
10. The site plan mentioned above and submitted by Mr. Bainter shows that water flows uphill, in defiance of the laws of gravity, up a shoulder of land, towards homes that are located up and out of the Shaw Creek FEMA 100-year Floodplain.
11. Using the JARPA (with falsified responses), Mr. Bainter and Bainter Group LLC obtained an HPA in 2012 that was drafted by a low level field biologist at the WDFW named eric bartrand (emphasis mine).

12. Mr. Greg Bainter and Bainter Group LLC did not submit project plans to relocate Shaw Creek or to fill the legally defined position of the watercourse (and fill the associated critical areas).
13. With no written Bainter project application dealing with the relocation of Shaw Creek, no legally allowed commenting period, and no public hearings regarding the diversion of the stream, no member of the public was ever allowed to offer comments regarding the diversion and relocation of Shaw Creek.
14. With no written Bainter project application dealing with the filling of critical areas associated with Shaw Creek, no legally allowed commenting period, and no public hearings regarding the placement of fill within critical areas, no member of the public was ever allowed to offer comments regarding the filling of Shaw Creek as defined by the 2011 survey and the filling of critical areas.
15. Despite the fact that there was no written project description dealing with the relocation of Shaw Creek and the filling of critical areas, the HPA drafted in 2012 for Mr. Bainter and Bainter Group LLC authorized preemptive habitat destruction by specifying the steps required to relocate Shaw Creek to a new watercourse and to fill critical areas.
16. Each project proposed and executed by Mr. Bainter associated with Shaw Creek is to be described in a written project proposal; this has not occurred.
17. Each written Bainter project proposal is to be legally reviewed and subject to public comments; this has not occurred.

18. Each written Bainter project proposal is to be associated with the issuance of an associated permit (i.e. Critical Area Permit; Hydraulic Project Approval); this has not occurred.
19. Lacking any written project proposal, a permit may not be issued.
20. The HPA of 2012 was issued for a Bainter stream relocation and filling of critical areas despite the fact that there was no associated written project proposal.
21. A copy of the HPA of 2012 was given to Mr. Jeff Peters before Mr. Bainter and Bainter Group LLC began illegal excavations on parcel 21403.
22. City of Yakima Officials appear to have treated this stand-alone HPA of 2012, with no supporting project application, as a legitimate permit authorizing the relocation of Shaw Creek and authorizing the filling of critical areas
23. City of Yakima Officials have removed both the JARPA of 2012 and the HPA of 2012 from the Bainter Planning File; this would appear to be an intentional effort by the City of Yakima to disallow dissemination of public documents from inquiry by members of the public.
24. The removal of public record documents from the Bainter Planning File, disallowing access to these documents by members of the public, would appear to be an intentional act designed to circumvent the Public Records Act.
25. Mr. Bainter and Bainter Group LLC did not obtain a required US Army Corp of Engineers permit to relocate Shaw Creek.
26. Mr. Bainter and Bainter Group LLC did not obtain a required Critical Area Permit to relocate Shaw Creek.

27. Officials from Yakima Countywide Flood Control were informed in advance that Mr. Bainter and Bainter Group LLC would be relocating Shaw Creek and filling critical areas.
28. In 2012, no City of Yakima Official and no Yakima County Official took meaningful action to stop Mr. Bainter's (and Bainter Group LLC) preemptive habitat destruction on parcel 21403.
29. Mr. Jeff Peters had reviewed the Bainter environmental documents and the Critical Area Permit for the City of Yakima's Planning Department in 2012 and then was given a copy of the HPA of 2012 showing that Mr. Bainter was planning to illegally destroy Shaw Creek and the associated critical areas. Mr. Jeff Peters did not take meaningful action on behalf of the City of Yakima to stop the critical area destruction by Mr. Greg Bainter and Bainter Group LLC.
30. With Yakima County Officials in attendance, in April 2012, Mr. Bainter brought heavy equipment into the Shaw Creek critical areas. Mr. Bainter and Bainter Group LLC relocated Shaw Creek into the so-called 'dry flood control ditch' and applied tons of fill to the legally defined position of Shaw Creek (see Bainter land survey of 2011). Illegal fill was applied to the following critical areas: Shaw Creek watercourse, Shaw Creek floodway, Shaw Creek FEMA 100-year Floodplain, Shaw Creek Riparian Buffer Zone, Shaw Creek wetlands, Shaw Creek wetland buffer zones, habitat for endangered species. Pools, in-stream habitat, and fish were destroyed.

31. Yakima County Officials informed Mr. Peters (in 2012) on the first day of excavations that the Bainter Group LLC destruction of Shaw Creek and the associated critical areas had started.
32. In 2012, no commenting agency and no member of the public was allowed to make comments regarding the City of Yakima Planning Decision to allow Mr. Bainter and Bainter Group LLC to relocate Shaw Creek and to fill Shaw Creek critical areas.
33. By disallowing input from the public regarding the City of Yakima Planning Decision to allow for the relocation of Shaw Creek (and filling of the Shaw Creek critical areas), the City of Yakima violated the Open Public Meetings Act.
34. The illegal diversion and relocation of Shaw Creek to a new watercourse would appear to be a criminal violation of CWA 404(C) (this appears to be a felony offense).
35. The illegal filling of Shaw Creek and associated critical areas would appear to be a criminal violation of CWA 404(C) (this appears to be a felony offense).
36. Mr. Bainter appears to have committed a criminal violation of CWA 404(C).
37. Mr. Jeff Peters appears to have aided these violations of CWA 404(C).
38. Mr. Thomas Durant has provided material aid to a criminal violation of CWA 404(C).
39. Individuals under a federal felony indictment are not likely to be allowed to use their passports to leave the United States of America.

40. According to the APA ethics policy, documented actions by Mr. Thomas Durant may result in the loss of the AICP credential and expulsion from the APA; this is an associated issue for Mr. Durant.
41. “Illegal-Bainter-Ditch” is the term ascribed to the illegal ditch excavated by Mr. Bainter on parcel 21403; this serves to distinguish the ditch from the legally defined watercourse of Shaw Creek before Mr. Bainter and Bainter Group LLC illegally relocated the stream. (See land survey of 2011)
42. The placement waters into the Illegal-Bainter-Ditch, a straight-line channel, removed natural flood control features associated with the legally defined location of Shaw Creek.
43. Homes along Shaw Creek (within the Cottonwood Grove Subdivision) immediately downstream from the Bainter site subsequently are experiencing serious crawl space flooding requiring high volume pumps to remove floodwater.
44. Mr. Greg Bainter, Mr. Thomas Durant, Bainter Group LLC, and the City of Yakima share liability related to flooding of homes downstream from the Illegal-Bainter-Ditch.
45. The excavation of the Illegal-Bainter-Ditch into permeable alluvial soils has altered the stream hydrology allowing for infiltration of water downward into soils and into the subsurface aquifer.
46. The subsurface aquifer and hyporheic zone of Shaw Creek within the Bainter commercial zone are recorded to be just 24-48 inches below the soil surface.

47. The subsurface aquifer is used by multiple nearby homes using domestic wells for potable water.
48. Infiltration of fecal bacteria and other toxins into the aquifer at the Bainter site places human health at risk.
49. Mr. Greg Bainter, Mr. Thomas Durant, Bainter Group LLC, and the City of Yakima share liability related to the introduction of fecal bacteria and other toxins into the subsurface aquifer.
50. Mr. Greg Bainter has repeatedly mowed up to the high water mark of the watercourse on parcel 21403 in 2012, 2013, and 2014.
51. Mr. Greg Bainter and Bainter Group LLC did not plant 14,000 Sq Ft of native vegetation as permitted by the Critical Area Permit of 2012. Mr. Bainter has repeatedly mowed the vegetation within the so-called “planting area” that was demonstrated within Bainter plans to contain an abundance of native shrubs and trees.
52. The City of Yakima issued to the Yakama Indian Nation the so-called “Bainter Riparian Habitat Improvement Project” for their review and comments. The Yakama Nation did submit comments about the “habitat enhancement” project but did not make comments about the stream relocation and filling of the riparian habitat due to the fact that the real Bainter plan was not divulged to them. The failure of the City of Yakima to truthfully inform the tribe may have violated treaty rights between the United States and the Yakama Nation.

53. Despite clear Notices of Complaint (with photographs), the City of Yakima has failed to protect critical areas along Shaw Creek within the Bainter commercial zone.
54. Following the preemptive habitat destruction in 2012, Mr. Bainter, Bainter Group LLC, and Mr. Durant have presented new development plans to the City of Yakima Planning Department in 2014 to excavate within critical areas (See 2014 JARPA, SEPA, Critical Area Forms, Site Plan, 2013 Survey) on parcel 21403.
55. As a result of the preemptive filling of wetlands and wetland buffers, Mr. Greg Bainter, Bainter Group LLC, and Mr. Thomas Durant have presented new development plans to the City demonstrating that there are no longer any wetlands along the planned areas of excavation. The former wetlands and wetland buffers are now under tons of illegal fill. The preemptive illegal destruction of habitat in 2012 has facilitated the new Bainter plans for commercial development in 2014.
56. Filled portions of the Shaw Creek FEMA 100-year Floodplain, illegally filled by Mr. Greg Bainter and Bainter Group LLC in 2012, are now labeled as B-2 commercial land (on the Bainter Site Plan of 2014) without ever proceeding through Land Use Hearings and Zoning Hearings. According to Mr. Greg Bainter, Bainter Group LLC, and Mr. Thomas Durant, the illegal filling of critical areas amounts to economic gain for the developer since the filled critical areas have changed from R-1 to B-2 commercial zoning, and would therefore be more valuable.

57. Thus far (in 2014), the City of Yakima has processed the Bainter project documents and has issued a State Environmental Planning Act Determination of Non-significance (SEPA-DNS) indicating that there are no significant environmental impacts resulting from the Bainter development processes. Issuing a SEPA-DNS eliminates the developer's needs of further environmental studies, some hearings, and other parts of the evaluation process required by YMC 15 for the issuance of a permit.
58. The City of Yakima has issued a Critical Area and Floodplain Development Permit for Mr. Bainter, helping to vest Mr. Bainter and Bainter Group LLC with the deceptive and illegal conversion of R-1 to B-2 land.
59. The Critical Area and Floodplain Development permit decision by Mr. Jeff Peters was appealed and is under review.
60. The City of Yakima is co-lead agent for Shaw Creek NEPA.
61. The Official in charge of Shaw Creek NEPA for the City of Yakima is Mr. Jeff Peters.
62. Mr. Jeff Peters and the City of Yakima have made a decision that Shaw Creek will, in the near future, be completely relocated to a new ditch or swale that is devoid of critical areas.
63. Mr. Jeff Peters and the City of Yakima have made self-serving decisions to allow for the destruction of critical areas along the existing Shaw Creek; the Shaw Creek NEPA plans that Mr. Peters and the City have created show no wetlands, no tress, no pools, no fish habitat, and generally no critical areas along the planned new Shaw Creek NEPA ditch. Here too is the practice of

preemptive habitat destruction in advance of development. In this case, the preemptive habitat destruction has been authorized and facilitated by Mr. Jeff Peters.

64. Decisions have been made by Mr. Peters and the City of Yakima to allow for preemptive habitat destruction in preparation for a pending Shaw Creek stream relocation. This preemptive habitat destruction simplifies flood control plans for the City of Yakima by reducing the amount of wetlands and other critical areas which the City would be required to replace when the stream is moved as planned (*See Shaw Creek NEPA Flood Control Plans*).
65. The integration of Shaw Creek NEPA decisions that result in criminal violations of the federal Clean Water Act on parcel 21403 and the larger Bainter B-2 commercial zone has corrupted the processes of Shaw Creek NEPA.
66. The continued role of Mr. Jeff Peters and the City of Yakima as a lead agent with Shaw Creek NEPA is very concerning and improper due to the close affiliation of City of Yakima Planning Decisions by Mr. Peters that have resulted in felony violations of CWA 404 (C).
67. Shaw Creek is a perennial stream; numerous City of Yakima Planning documents consistently indicate that Shaw Creek is a fish-bearing, perennial stream. In addition, WDFW site visits have also documented the presence of fish within Shaw Creek.
68. Shaw Creek has contained fish pools with local populations of fish. Several Planning Department documents submitted by Mr. Bainter affirm the presence

of fish within pools within Shaw Creek. Mr. Bainter has documented the presence of trout and speckled dace within Shaw Creek. Mr. Bainter has referred to environmental documents supporting that Shaw Creek contains habitat for Bull Trout and Steelhead and is a migration route for fish.

69. All pools on the Bainter site within the B-2 commercial zone have been destroyed (*Photographs have been obtained*).
70. All pools on the Radke site within the B-2 commercial zone have been destroyed (*Photographs have been obtained*).
71. Mr. Glen Radke also owns B-2 commercial land within the “Bainter Commercial Zone”.
72. Mr. Glen Radke’s land abuts Shaw Creek immediately downstream from parcel 21403 (land owned by Bainter Group LLC).
73. In October, 2014, Mr. Glen Radke brought an excavator to his land and, lacking legal permits (i.e. no public notice), excavated within the waters of Shaw Creek.
74. The recent Radke excavations destroyed all pools and all fish residing within Shaw Creek along the land owned by Mr. Radke.
75. Mr. Glen Radke destroyed wetlands in October, 2014.
76. Other Radke critical area violations in October, 2014 include: adding fill to the riparian buffer zone, adding fill to wetlands, adding fill to wetland buffers, adding fill to the Shaw Creek FEMA 100-year Floodplain, uprooting of trees within the riparian buffer zone, destruction of limbs within the riparian buffer zone, illegal construction of channels and dikes along Shaw Creek, destruction

of fish, destruction of habitat for Bull Trout (federal endangered species list),
destruction of habitat for Steelhead (federal endangered species list).

77. The timing of Radke excavations within Shaw Creek immediately preceded the Shaw Creek NEPA site visit of October 22-23, 2014.
78. There are no longer fish or fish pools in Shaw Creek within the Bainter B-2 commercial zone.
79. Destruction of pools and the dewatering of Shaw Creek without legal permits is a violation of the federal Clean Water Act and the federal Endangered Species Act. Violators of the ESA may be: Mr. Greg Bainter, Mr. Thomas Durant, Mr. Glen Radke. Accessories to the violations of the ESA may be Adele Bainter, Jeff Peters and Eric Bartrand.
80. On October 20, 2014, photographs demonstrate that Mr. Greg Bainter and Bainter Group LLC have dewatered Shaw Creek as all waters within the Illegal-Bainter-Ditch infiltrate into permeable alluvial soils within the ditch.
81. No waters flow through the Illegal-Bainter-Ditch. No waters flow to the downstream watercourse of Shaw Creek (*Photographs have been obtained supporting these facts*).
82. The destruction of Shaw Creek pools, fish within pools, and the dewatering of Shaw Creek occurred immediately before the arranged inspection of Shaw Creek and Shaw Creek critical areas by Yakima County and biology inspectors who were contracted to perform a study dealing with Shaw Creek. The Shaw Creek inspection and study was scheduled for the week of November 19, 2014; this biology site visit of Shaw Creek (for Shaw Creek

NEPA) would affirm that Shaw Creek contained no water, no pools, and no fish. An inspection of Shaw Creek prior to destruction of fish-containing pools and dewatering of the watercourse at the Bainter site would have resulted in significantly different results.

83. The inspections of Shaw Creek with the flood control project are, in part, designed to identify wetlands so that the United States Army Corp of Engineers (USACE) can create plans to replace wetlands when the new, planned flood channel is created.
84. The majority of wetlands at the Bainter site are now located under tons of illegal fill and large areas of wetlands on the Radke site have been removed by an excavator in October, 2014. The wetlands will not be accounted for within USACE plans for Shaw Creek NEPA due to the fact that the wetlands within this commercial zone have been destroyed. The preemptive destruction of wetlands and other critical areas within the commercial zone serve to facilitate development of the City of Yakima and Yakima County flood control project for Shaw Creek.
85. The timing of the Bainter dewatering of Shaw Creek immediately preceded the Shaw Creek NEPA site visit of October 22-23, 2014.
86. Mr. Greg Bainter lives on parcel 21401 near Tieton Drive.
87. Mr. Greg Bainter purchased parcel 21401 and the home in approximately 2004.

88. Mr. Greg Bainter, by moving to a home on parcel 21401, has not gained legal rights to mow and destroy critical areas associated with Shaw Creek on parcel 21403 that is owned by a corporation (Bainter Group LLC).
89. As General Manager of Bainter Group LLC, Mr. Greg Bainter does not possess any legal right or authority to destroy critical areas along Shaw Creek.
90. Mr. Bainter and Bainter Group LLC assert that settlers and ancestors grew grass on sites near Shaw Creek. Mr. Bainter now asserts that the current Bainter Group LLC destruction of critical areas along Shaw Creek can be justified and “legalized” when considering the prior use of the land by deceased ancestors (i.e. growing grass).
91. Mr. Jeff Bainter illegally operated a monster truck operation in a shop on parcel 21403; he did not then live on the parcel (apparently he lived near Roslyn).
92. On July 16, 2014, City of Yakima Code Enforcement Officials issued to Bainter Group LLC a Stop Order and a Notice of Violation regarding critical area violations on parcel 21403. The order by the City of Yakima was insufficient to stop critical area destruction along Shaw Creek. The order was, in effect, nominal due to the fact that the City allowed by Bainter and Bainter Group LLC to resume critical area destruction a few weeks later. Critical area destruction at the site has not stopped and no restoration of critical area damage has occurred. The abatement of the Illegal-Bainter-Ditch has not occurred even though the Bainter Code Enforcement file has stamped the word “abated” on the Code Enforcement documents.

93. On August 4, 2014 Mr. Greg Bainter indicated he was the General Manager of Bainter Group LLC.
94. According to public records, Bainter Group LLC gained ownership of parcel 21403 in 2004.
95. On August 4, 2014, Mr. Greg Bainter, general manager for Bainter Group LLC, indicated to Mr. Jeff Peters at the City of Yakima that destroying critical areas up to the high water mark of the watercourse (on parcel 21403) was a “minor activity” and should be allowed by Bainter Group LLC without a permit.
96. On August 7, 2014, Mr. Jeff Peters viewed some photographs of grass fields and the illegal monster truck operation at the site. Mr. Peters then indicated that Bainter Group LLC could destroy vegetation within the critical areas up to the high water mark on parcel 21403.
97. The Planning and Code Enforcement Decision (allowing Bainter Group LLC to destroy critical areas) for the City of Yakima was made by Mr. Jeff Peters who has been associated with the felonious violation of the Clean Water Act as a result of the illegal diversion and relocation of Shaw Creek (with associated illegal filling of critical areas) on parcel 21403 by Mr. Greg Bainter and Bainter Group LLC.
98. The Planning and Code Enforcement Decision for the City of Yakima by Mr. Jeff Peters further entangles the City with financial and legal liabilities. The City of Yakima is now wholly or partially liable for restoration of destroyed critical areas on parcel 21403 owned by Bainter Group LLC.

99. On October 7, 2014, Bainter Group LLC planted a few seedlings along the Illegal-Bainter-Ditch. The recent planting of seedlings near the Illegal-Bainter-Ditch is an attempt to address noncompliance with the 2012 planting plan presented in the so-called “Bainter Riparian Habitat Improvement Project” that was proposed by Mr. Bainter, Bainter Group LLC, and Mr. Thomas Durant. The observed plantings do not correspond to the planting plan of 2012 and do not establish vegetation in a zone extending fifty feet from the Illegal-Bainter-Ditch (i.e. the defined Shaw Creek critical area). There is none of the required mulching. There is none of the required beaver protection. There is no irrigation system in place as required by the planting plan.
100. The planting of vegetation along the Illegal-Bainter-Ditch would appear to be a coordinated attempt by Mr. Bainter, Bainter Group LLC, Mr. Durant, and Mr. Peters (for the City of Yakima) to redefine the location of the Shaw Creek Critical Areas. These parties agree that the Illegal-Bainter-Ditch defines the centerline and high water mark for establishing critical areas along Shaw Creek. Bainter, Bainter Group LLC, Durant, Peters, and the City of Yakima now affirm that planting along the ditch is, in fact, planting native vegetation within the Shaw Creek critical area. Both Bainter and the City are firmly entrenched with the concept that the ditch is to now define the centerline for critical areas and the fact that the ditch was illegally constructed should be simply ignored. The City of Yakima and Mr. Bainter also affirm that the ditch is now establishing the new R-1/B-2 boundary line.

101. The destruction of critical areas on parcel 21403 has been declared by Mr. Greg Bainter and Mr. Jeff Peters to be a “minor alteration” and should be allowed without City of Yakima permits. (See Bainter Group LLC letter of August 4, 2014)
102. The decision by Mr. Jeff Peters, on August 7, 2014, to allow continued and repeated destruction of critical areas along Shaw Creek on property owned by Bainter Group LLC should be reviewed by City of Yakima supervisors and legal staff.
103. The destruction of Shaw Creek critical areas by Bainter Group LLC as a “minor alteration” on parcel 21403 is not likely to survive a judicial review that scrutinizes the duty of the City of Yakima to protect Shaw Creek critical areas.
104. When reviewing the City of Yakima Decision to allow for critical area vegetation destruction along Shaw Creek, the City Manager and the legal staff should make appropriate decisions regarding other apparent Bainter critical area violations and issues including: the illegal diversion of Shaw Creek without permits; the illegal filling of wetlands without permits; the illegal filling of the Shaw Creek FEMA 100-year Floodplain without permits; the illegal filling of the Riparian Buffer Zone without permits; the introduction of fecal bacteria and other toxins into the subsurface aquifer; the dewatering of Shaw Creek; the flooding of homes immediately downstream from the Illegal-Bainter-Ditch; the allowed preemptive habitat destruction to facilitate City of Yakima Shaw Creek NEPA plans; the liabilities associated with paying for

home flooding in Cottonwood Grove; the liabilities associated with paying for critical area restoration; the liabilities associated with aquifer contamination; the liabilities associated with apparent violations of the federal Clean Water Act; the difficulties now arising for the City of Yakima continuing as a lead agent with Shaw Creek NEPA; legally required notification of FEMA, Ecology, and adjacent property owners resulting from the 2012 relocation of Shaw Creek. Radke critical area violations should also be investigated by the City of Yakima.

105. Predetermination that preemptive habitat destruction by Bainter Group LLC will benefit City of Yakima Plans for Shaw Creek NEPA is probably a two sided sword. The preemptive destruction of habitat along Shaw Creek may lead to helpful biology site inspection reports and helpful USACE reports, but the preemptive destruction of habitat within critical areas is also an apparent felony violation of CWA 404 (C). City of Yakima Officials have facilitated and authorized critical area destruction along Shaw Creek by developers such as Bainter Group LLC.

Summary

In sum, Bainter Group LLC continues to mow vegetation within critical areas on parcel 21403. The fact that deceased relatives of Mr. Greg Bainter (*Mr. Bainter happens to now be the general manager of Bainter Group LLC*) grew grass in the West Valley appears to be irrelevant and does not support or justify critical area destruction along Shaw Creek (parcel 21403) by Bainter Group LLC in 2014. Photos

of the illegal monster engine company within City of Yakima code enforcement files serve to prove that an illegal business operated at the site in the past. The fact that Mr. Bainter now lives on parcel 21401 does not serve to justify critical area destruction on parcel 21403 by Bainter Group LLC.

The acquisition of parcel 21403 by Bainter Group LLC would appear to confer to this legal entity no special rights, permission or authority to destroy critical areas at the site. Mr. Jeff Peters has entangled the City of Yakima with financial and legal liabilities related to flooding of homes, restoration of critical areas, and contamination of the aquifer. In addition, Mr. Jeff Peters and the City of Yakima are entangled with the felonious violation of the federal Clean Water Act. For the City of Yakima to allow Mr. Jeff Peters to continue to make decisions about Bainter Group LLC code enforcement issues would not appear to be prudent or legally appropriate. The Decision by Mr. Peters and the City of Yakima to allow Mr. Bainter and Bainter Group LLC to destroy Shaw Creek and Shaw Creek Critical Areas in 2012 without public comment is a violation of the Open Public Meeting Act. There is also evidence of violations of the Public Records Act. The decisions by Mr. Peters to allow for preemptive critical area destruction to facilitate Shaw Creek NEPA would appear to be ill-advised and illegal.

It must also be mentioned that Mr. Peters continues to be the Planning Official in charge of approving Bainter Group LLC development projects that are now under review. So far, Planning Officials at the City of Yakima have approved a Bainter document showing water flowing uphill in defiance of the laws of gravity.

Documents approved by Mr. Peters show Shaw Creek to be bone dry for six months of the year – and – at the same time, Shaw Creek (per Mr. Peters and the City of Yakima) is a raging floodwater capable of flooding hundreds of homes within the West Valley of Yakima. And Mr. Peters has insisted (via a project “condition”) that he see proof from Mr. Bainter that a proper mitigation plan is to cast out grass seeds on the utility easement and then cover those seeds with tons of rock; this would appear to be complete nonsense.

When diligently reviewing item Mr. Peters conflicting roles and obligations, careful attention should be paid to the legal requirement for the City of Yakima to formally notify FEMA, the Department of Ecology, and downstream property owners. The legal requirement for the City of Yakima is clearly required when a stream such as Shaw Creek is diverted and relocated. There is a check and balance system in place such that outliers such as Mr. Jeff Peters cannot disregard laws making arbitrary decisions leading to flooding of downstream properties. Ecology and FEMA provide a level of legally mandated oversight for diversions and relocations of watercourses. Ecology and FEMA should be immediately informed about the diversion of Shaw Creek by Mr. Bainter and Bainter Group LLC. There is actually a legal mandate specified within the YMC for the City of Yakima to inform Ecology, FEMA and downstream communities in advance of the diversion and relocation of a stream. When Mr. Jeff Peters was informed that Shaw Creek was to be relocated by Bainter Group LLC, it appears that he failed to fulfill the legally mandated duty to inform these entities before the relocation of Shaw Creek. Ecology, FEMA, and downstream property owners should receive a clear statement that homes located a short distance

down from the illegal diversion of Shaw Creek on property owned by Bainter Group LLC are experiencing significant crawl space flooding requiring high volume pumps (for removal of accumulated water that is flooding the homes) *See photographs within the Code Enforcement File*. With the relocation of Shaw Creek, absent the normal regulatory process, real flooding of homes has resulted.

Given the legal and financial entanglements of the City of Yakima, it is debatable that anyone within the City can make fair development and code enforcement decisions regarding Bainter Group LLC. The continued role of Mr. Peters in making any decisions regarding Shaw Creek (i.e. Shaw Creek NEPA), Bainter Group LLC development, and Bainter Group LLC code enforcement should now stop. The legally appropriate action by the City of Yakima is to enforce critical area protections on land owned by Bainter Group LLC (parcel 21403).

Given the well documented critical area violations, there is a legally described process for critical area restoration. First, when there are documented critical area violations, all development at the site stops. Second, a Notice of Violation is issued and the site is posted with big yellow signs (i.e. legally placed signage) that indicate the nature of the violations. Bainter Group LLC (along with other violators) is then required to pay Qualified Professionals to develop plans to restore critical areas at the site. For Bainter Group LLC, abatement of the Illegal-Bainter-Ditch will be required. Restoration of the Shaw Creek watercourse including the restoration of wetlands, pools, vegetation and protected critical areas will be required. When the legally

required restoration has occurred, Bainter Group LLC may be allowed to continue with plans for development.

Corruption of the normal processes within Planning and Code Enforcement disallow the normal procedures related to issuing a Notice of Complaint. Preemptive destruction of critical areas within the B-2 commercial zone that is authorized and facilitated by both Planning and Code Enforcement personnel in the City of Yakima lead to the conclusion that the City Manager and Legal Staff should now step in, review these matters, and take direction of the problems.

*****Please place a copy of this document within the Bainter/Bainter Group LLC
Planning Department File for 2014**

*****Please place a copy of this document within the Bainter/Bainter Group LLC
Code Enforcement File for 2014**